UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/817,573	03/26/2001	Karl Draganitsch	WRA 32830	7774

7590 08/29/2002

LERNER AND GREENBERG, P.A.
POST OFFICE BOX 2480
HOLLYWOOD, FL 33022-2480

EXAMINER
TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
1761	8

DATE MAILED: 08/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/817,573	Applicant(s) Draganitsch et al.
	Examiner Lien Tran	Art Unit 1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *Jul 29, 2002* .

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-13* is/are pending in the application.

4a) Of the above, claim(s) *7-13* is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-6* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

1. Applicant's election of Group I claims 1-6 in Paper No. 6 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. The disclosure is objected to because of the following informalities:

Throughout the specification, the term " technological properties of sugar" is repeatedly used. It is not clear what is meant by " technological properties". Technological is defined as " resulting from or affected by scientific and industrial progress"; it is not clear and the specification does not define what would be considered as " technological properties" of sugar.

Appropriate correction is required.

3. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1: Line 4, what does applicant mean by " technological properties of sugar"? Line 6, the term " hot state" is indefinite because it is a relative term; what would be considered as hot state? Line 9 has the same problem as line 4. Line 10 has the same problem as line 6. Line 12, what does applicant mean by " spatially shaping"?

In claim 2: Line 2, is " a food product" the same one as that stated on line 6 of claim 1; if so, " the" or " said" should be used to have proper antecedent basis.

Claim 3 has the same problem as line 4 of claim 1.

In claim 5, what does applicant mean by " spatially shaped"?

In claim 6, the term " hot" has the same problem as line 6 of claim 1.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-3,5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolf in view of Biggs et al.

Wolf discloses a method of making closed filled wafer strips. The method comprises the steps of placing a single layer of wafer sheets on a suitable conveyor to form a continuous wafer sheet layer, covering the layer with a filling material and then covering the filling layer with a second layer of wafer sheets in the same manner as that described for the first layer. Under certain circumstances it may, of course, be necessary or desirable to equalize the thickness of the

filled wafer strip by suitable pressing means in the form of rollers or bells. It is also possible to have composite wafers having several layers of filling material and wafer layers. After cooling, the wafer strip is cut into individual wafers (See col. 1-3)

Wolf does not disclose the sugar content of the wafer, the wafer being in a hot state and the type of filling material.

Biggs et al disclose a wafer product in which the wafer contains 28.7% sugar and the wafer product has a coating. (See col. 2)

It would have been obvious to one skilled in the art to include any amount of sugar in the wafer product depending on the taste desired. The amount of sugar claimed is conventional as shown by Biggs. It would have been obvious to adjust the sugar content depending on the degree of sweetness desired. As to the hot state, it is unclear what would be considered as hot state; the specification does not define what would be considered as hot. Since Wolf teaches to press the wafer layers, it is expected the wafer is still warm such that it is still flexible to enable the pressing step because as the wafer cools, it is harden and pressing will bread the wafer layers. It would also have been obvious to coat the wafer product with a coating material as taught by Biggs to obtain different flavor and taste. It would also have been obvious to use any type of filling depending on the flavor and taste desired.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wolf in view of Biggs et al as applied to claims 1-3 and 5-6 above, and further in view of Haas Sr. et al. (4518617).

Neither Wolf nor Biggs et al teach cutting the wafer product into hollow bodies and filling the hollow bodies.

Haas Sr. et al teach wafer product can be cut into many different shapes including hollow wafer, hollow stick etc.. (see column 1)

It would have been obvious to cut the wafer product in any shape desired as Hass et al teach wafer product can be formed into many different shapes. It would also have been obvious to fill the hollow shape to obtain filled wafer product having different taste and flavor.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Aujourd'hui, Ferrero and Cavanagh disclosed filled wafer products.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

August 23, 2002

Lien Tran

LIEN TRAN
PRIMARY EXAMINER
Group 1700